

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.5216 OF 1986

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

MALI VANMALI ANANDBHAI & ANR.
VERSUS
THE STATE OF GUJARAT & ORS.

Appearance:

Mr.R.N. Shah for the Petitioner
Mr.H.L. Jani for the Respondent No.1 & 2
None present for other Respondents

Coram: S.K. Keshote,J
Date of decision:9.5.97

C.A.V. JUDGMENT

Heard learned counsel for the parties.

2. Challenge is made by the petitioners in this Special Civil Application to the order of the Assistant Collector, Palitana, District Bhavnagar, dated 5.10.83, declining thereunder the permission to the petitioners, of non agricultural use of the agricultural land of Survey No.21/1 admeasuring 1 acre - 17 gunthas, situated at Palitana, District Bhavnagar, and the order of respondent No.1 dated 30.11.85, confirming the said order in revision under Section 211 of the Bombay Land Revenue Code.

3. The authorities declined to grant the non agricultural permission to the petitioners under Section 65 of the Bombay Land Revenue Code on the ground that they have entered into an agreement to sell the lands in question in dispute to the promoter of the proposed Panchsheel Cooperative Housing Society dated 20th May 1974. It is contended by learned counsel for the petitioners that this ground should not have been taken to decline permission to the petitioners for non agricultural use of the agricultural land as the agreement to sell the said lands, reference of which has been made by the authorities, was cancelled.

4. I do not find anything on the record of the Special Civil Application, in support of the contention of the learned counsel for the petitioners, of cancellation of agreement to sell dated 20th May 1974 made by the petitioners in favour of the said society. In view of this fact, sitting under Article 226 of the Constitution of India, no exception can be taken to the orders made by the authorities on the aforesaid ground. Moreso, it is still open to the petitioners to make a fresh application for the grant of non agricultural permission and the said application has to be considered afresh by the authorities in accordance with law. The orders made in such cases are not res-judicata and they are always open to fresh consideration on fresh grounds. The upshot of the aforesaid discussion is that this petitioner is devoid of any merits and the same deserves to be dismissed.

3. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court, stands vacated. No order as to costs.

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(sunil)